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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/749,254

Applicant(s)

S. Kovac et al

Examiner

Michael Brown

Group/Art Unit

3764

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-39 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 16-39 is/are allowed.
- ☒ Claim(s) 1-7 and 9-15 is/are rejected.
- ☒ Claim(s) 8 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fenwick in view of Cawood.

Fenwick discloses in figures 1-11 a medical device, substantially as claimed, as set forth in the previous office, paragraph no. 6, Paper No. 5. However, the issue here is whether the adhesive is proximate to the aperture. Cawood teaches in figures 1-5 a medical device comprising a flexible sheet 11, having an aperture 15, an adhesive backing (col. 2 lines 63-64) and a finger cot. The adhesive is proximate to the aperture (fig. 1 the annular covers 18 cover the adhesive). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the adhesive being proximate to the aperture as taught by Cawood could be incorporated into the medical device disclosed by Fenwick in order to be able to attach the drape to the person around the finger cot.

Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Thomalla.

Thomalla teaches in figure 1 a medical device comprising a sheet 12 having adhesive tabs (34, 36) located on the sheet and adhesive tabs located proximate (fig. 1)

Art Unit: 3764

the lower corner of the sheet. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the adhesive tabs as taught by Thomalla could be incorporated into the medical device disclosed by Fenwick and taught by Cawood in order to be able to secure the sheet to the chest, sides of the torso and the legs of the patient.

Claims 2-3, 5, 9-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Taylor.

Fenwick discloses in figures 1-11 a medical device that further comprises what appears to be a pouch portion (in figure 1, the lower section 31 is shaped as a pouch) and a drain port 22. Taylor teaches in figure 6 a medical device comprising a pouch 110 and a stiffener 118. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the pouch and the stiffener as taught by Taylor could be substituted for the funnel shape disclosed by Fenwick because the two devices are interchangeable. Either device could be used to funnel body fluids into a drain port. The stiffener would be used to retain the open end of the pouch during use. It is inherent that the aperture size could be between two and six inches in diameter or four inches in diameter because the dimensions of the aperture are not critical.

Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Baker.

Baker teaches in figures 1-11 a medical device comprising a sheet 12 and an adhesive 14 that includes an antimicrobial agent (col. 6, lines 24-27). It would have

Art Unit: 3764

been obvious to one having ordinary skill in the art at the time that the invention was made that the medical device disclosed by Fenwick and taught by Cawood could be fabricated with an antimicrobial agent on the sheet and in the adhesive as taught by Baker in order to use the antimicrobial agent to treat cuts or injuries that the patient might incur while the sheet is attached to the patient.

Claims 4 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over references as applied to claim 1 above, and further in view of Neal.

Neal teaches in figures 1-2 a medical device comprising an aperture 24 that is oval shaped and graduated markings (fig. 2) on the pouch. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the oval shaped aperture as taught by Neal could be substituted for the circular shaped aperture disclosed by Fenwick in order to have an aperture of sufficient size to provide access to the crotch area of the patient. It is inherent that the aperture could be four inches long. The graduate markings could be used to gauge the amount of fluid that flows into the pouch.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Cawood.

Art Unit: 3764

Cawood discloses in figures 1-5 a medical device comprising a sheet 11, of flexible material having an aperture 15, an adhesive backing (col. 2, lines 63-64) and a finger cot 16.

Allowable Subject Matter

Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16-39 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 703-308-2682. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

M. Brown
December 14, 2003



MICHAEL A. BROWN
PRIMARY EXAMINER